

NEW YORK CITY BAR

COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

JANE HOFFMAN

CHAIR

55 WEST 14TH STREET, SUITE 8D

NEW YORK, NY 10011

Phone: (212) 243-5423

Fax: (212) 675-4534

jehoffman@earthlink.net

KELLEY WIND

SECRETARY

440 KENT AVE, APT 18A

BROOKLYN, NY 11211

Phone: (914) 381-6177

kdwind@yahoo.com

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Tom Vilsack, Secretary
United States Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretary Vilsack:

The New York City Bar Association (the "Association"), founded in 1870, is a private, non-profit organization of more than 23,000 attorneys, judges and law professors, and is one of the oldest bar associations in the United States. The Association's Committee on Legal Issues Pertaining to Animals ("LIPTA") regularly addresses legal, regulatory, and policy issues on a local, state and national level affecting non-human animals, both wild and domestic.

LIPTA welcomes this opportunity to submit specific recommendations to consider as you develop the USDA's policies relating to non-human animals—policies that historically have allowed unimaginable suffering to occur. The Association already has position statements on record relating to a number of issues under your jurisdiction. This memo focuses on the following issues and recommendations that can be implemented within the first few months of the new administration:

- (1) *Farm animals and agribusiness.* The USDA should promote a reduction in the amount of animals used in agriculture and encourage plant-based agriculture by dismantling the current subsidy system.
- (2) *Animals used for research.* The USDA should support legislation to eliminate invasive biomedical research and testing on all great apes including gorillas, chimpanzees, orangutans, bonobos and gibbons and vigorously enforce the Animal Welfare Act ("AWA"), 7 USC §§ 2131.

- (3) *Horse slaughter.* The USDA should support legislation outlawing the slaughter of horses for human consumption and the purchase, sale and transportation of horses to any plant, whether domestic or foreign.
- (4) *Companion animals.* The USDA should support legislation that requires puppy mill owners to provide breeding dogs with basic care, including proper shelter and daily exercise, and increase the regulation of puppy mills under the AWA.

1. Farm animals and agribusiness

The Association is gravely concerned about farm animal welfare largely because of the vast number of animals who are raised for food in the United States. We urge you to give careful thought to the cruelty that farm animals endure and develop policies that eliminate or minimize cruelty to animals, promote human health, and preserve our environment.¹

The most crucial steps the USDA should take are (i) promoting a reduction in the number of animals used in agriculture and requiring that better care be provided to farm animals, particularly those in confined animal feeding operations and slaughterhouses; (ii) promoting plant-based agriculture by decreasing subsidies for monocultured grains used to feed intensively confined animals; and (iii) increasing subsidies for the production of fruits, vegetables, and healthy grains meant for human consumption, which benefit human health and do not contribute to animal cruelty.

The practice of intensively farming animals in confined animal feeding operations and killing them in massive slaughterhouses subjects farm animals to egregious animal cruelty. Animals often live in quarters so small and crowded that they cannot even turn around or raise their limbs. In order to prevent the animals from killing or injuring each other in such small spaces, farmers mutilate the animals, for example, by trimming the beaks of chickens and docking the tails of pigs. Confinement systems currently in use have been rejected by the voters in every state where they have been made the subject of voter initiatives: Florida, Arizona and, most recently, California, where, in November 2008, voters rejected the use of confinement systems that severely restrict the movement of pregnant pigs, veal calves and egg-laying hens. Moreover, confinement systems have been rejected in Europe, where they are being phased out of use.

It is crucial that any legislative approach to the egregious cruelty suffered by farm animals address the use of customary cruel farming practices in specific terms.² The Association approves the Farm Animal Stewardship Purchasing Act (in the 110th Congress, the Farm Animal Stewardship Purchasing Act was pending as H.R. 1726), which requires require the federal government to purchase from only those suppliers who do not use the cruelest farming practices on their animals. This law would create a market for such suppliers and provide an incentive to

¹ President Obama has noted that the agriculture industry contributes more greenhouse gases than the transportation sector and that it is partly responsible for health problems that are causing the explosion in healthcare costs. (Joe Klein, *The Full Obama Interview*, TIME (Oct. 23, 2008), available at http://swampland.blogs.time.com/2008/10/23/the_full_obama_interview).

² While well-meaning legislation has been proposed that would create very general prohibitions of cruelty to farm animals, i.e., the Farm Animals Anti-Cruelty Bill (H.R. 6202), this type of measure is far too similar to state anti-cruelty laws, which have not effectively prevented the institution of cruel farming systems, but create the illusion that protections have been afforded

farmers to start phasing out the use of the cruellest systems. It would also create a precedent that may inspire private consumers to follow the example set by the government. This law has the potential to have a substantial effect on the use of confinement systems and other cruel practices.

Recently documented inhumane conditions in slaughterhouses, such as Hallmark in California, resulted in national alarm, subsequent congressional hearings and proposed legislative changes. Among other things, the recent investigation confirmed that sick, downed animals were illegally and cruelly driven to slaughter and that the number of USDA inspectors are not adequate to enforce the provisions of the Humane Slaughter Act and applicable regulations.

A requirement that slaughterhouses install video cameras, while not a substitute for adequate staffing by USDA inspectors, would supplement whatever existing or future enforcement measures are put into place and would enhance the ability to enforce the applicable laws and serve as a valuable tool to protect both animal welfare and human health. Potential constitutional problems under applicable State and Federal laws governing electronic surveillance³ would be avoided if the cameras were installed and operated by slaughterhouse owners and operators as a condition precedent to the issuance of a license and the renewal of a license. Rules regarding the integrity of the installation and recording (e.g., a requirement that recordings be over "real time," uninterrupted and protected from tampering) should be promulgated under the Code of Federal Regulations.

2. *Animals used for research*

(a) The Great Ape Protection Act

LIPTA urges the USDA to support the enactment of the Great Ape Protection Act (in the 110th Congress, the Great Ape Protection Act was pending as H.R. 5852), with slight modifications. The bill proposes to eliminate invasive biomedical research and testing on all great apes—gorillas, chimpanzees, orangutans, bonobos and gibbons—and to prohibit the use of Federal funds for this purpose. It further prohibits the breeding of great apes for use in invasive research and prohibits the knowing import, export, transport, movement, delivery, receipt, possession, rental, loan, purchase or sale of great apes for the conduct of invasive research. The statute would be effective three years after its enactment.

LIPTA recommends certain modifications to the Great Ape Protection Act as follows: (1) it should be expanded to cover, in addition, a prohibition on behavioral research and (2) the three-year deferral of effectiveness of the proposed statute should be eliminated, and certainly no new research or testing should be permitted to be commenced upon the passage of the legislation even if some minimal deferral period is retained.

With regard to chimpanzees specifically, the practical effect of the enforcement of this legislation would be to save from further suffering the approximately 1200 chimpanzees still held in laboratories in the United States, and to cause the retirement from such research to

³ In light of the reduced expectation of privacy in a closely regulated industry, (*U. S. v. Biswell*, 406 U. S. 311 (1972), *N. Y. v. Burger*, 482 U. S. 691 (1987)), the requirement of consent would not appear to present a constitutional issue. However, the higher standard of privacy enjoyed by targets of electronic surveillance renders it advisable that what is in effect inspection by electronic surveillance be done on the basis of consent. See *Berger v. N.Y.*, 388 U. S. 41 (1967).

permanent sanctuary of approximately 600 chimpanzees owned by the Federal Government. By way of background, we note that, in December 2007, amendments to the Chimpanzee Health Improvement, Maintenance, and Protection (CHIMP) Act (42 U.S.C. § 287a-31) were signed into law, requiring the Federal Government to provide for permanent "retirement" of chimpanzees who are identified "as no longer being needed in research." Additionally, in May 2007, the National Institutes of Health's National Center for Research Resources decided to permanently end funding for the breeding of government-owned chimpanzees for research. Even more recently, on February 5, 2008, a new five-year plan to further reduce, refine and replace the use of animals in research and regulatory testing was unveiled at a symposium marking the 10-year anniversary of the Interagency Coordinating Committee on the Validation of Alternative Methods.

The Great Ape Protection Act is welcome for several reasons. First, it is a logical extension of the amended CHIMP Act. A number of other countries limit or prohibit outright any biomedical research on great apes on ethical grounds alone, regardless of whether there might be possible scientific value in any such experiments. No sentient being should be subjected to wanton, prolonged cruelty, whatever such being's level of intelligence. However, the high intelligence, large size and social nature of great apes means that separation from their natural environment and social group and confinement in a laboratory involves an inherent cruelty even before these animals are subjected to any invasive biomedical experimentation. Second, the provisions of the AWA, and the regulations promulgated pursuant thereto, specifically provide that they are intended to prevent unnecessary suffering and promote alternative research. Third, decisional law illustrates the difficulty of enforcing laws intended to protect laboratory animals in the court system.

We recommend that this legislation be expanded to include behavioral experiments on any great apes. Their behavior during these experiments is not studied in their own natural setting, so it tells the observer little about them. Ethical considerations, as well as sound scientific and fiscal policy, favor the cessation of research on great apes.

(b) Enforcement of AWA generally

As a general matter with regard to animal research, the USDA should vigorously enforce the AWA, in contrast to the lax enforcement during the Bush Administration. These lax practices were summarized in the USDA Office of Inspector General Audit Report, "APHIS Animal Care Program Inspection and Enforcement Activities", Report No. 33002-3-SF, September 2005. Under current policy of the Animal and Plant Health Inspection Service (APHIS), which has the responsibility to inspect all facilities covered under the AWA and follow up on complaints of abuse and non-compliance, the Animal Care unit offers a 75% discount on stipulated fines (which, in any event, are not mandatory but agreed to by the violator) as an incentive for violators to settle out of court to avoid attorney and court costs. In addition to the discount, APHIS offered other concessions to violators, lowering the actual amount paid to a fraction of the original assessment.

Moreover, while Federal law requires research facilities to create Institutional Animal Care and Use Committees ("IACUCs") to oversee the facility's compliance with the AWA, the above-cited Inspector General Audit Report noted repeated failures of the IACUCs to detect, report, or correct serious problems in research programs. The audit report concluded, among its many critical findings, that (1) the number of research facilities cited for violations of the AWA steadily increased during the period examined, (2) "some IACUCs did not ensure that

unnecessary or repetitive experiments would not be performed on laboratory animals,” and (3) facility inspections revealed that IACUCs do not effectively monitor the “search for alternative research, veterinary care, review of painful procedures, and the researchers’ use of animals.” This failure to enforce existing law and thwarting of Congressional intent must cease.

3. Horse slaughter

LIPTA urges the USDA to (a) support legislation outlawing the slaughter of horses for human consumption and (b) support a comprehensive ban on the purchase, sale, and transportation of horses to any plant whether domestic or foreign.

For years, there have been slaughterhouses in this country specifically intended for horse slaughter to export the meat to European countries, primarily France and Belgium, and to Japan, where horse meat is used in restaurants and home cooking.

Significantly, the meat is not sold in the United States because a large majority of Americans find the idea abhorrent. Horses are not livestock that are raised specifically for slaughter and human consumption. What are sent to slaughter are companion and recreation horses, farm workhorses, carriage horses, and thousands of racing thoroughbreds that are no longer profitable. They are bought in many instances by agents of the plants, known as “killer-buyers,” often through fraudulently induced sales. The animals are then transported long distances in double-deck trucks designed for short-necked livestock; they have infrequent opportunities for rest, food, and water.

In recent years, approximately 100,000 horses were slaughtered annually in two plants in Texas and one in Illinois. An additional 30,000 were trucked annually to plants in Mexico and Canada. In 2007, the three plants were closed due to initiatives in Texas and Illinois under state statutes prohibiting the practice. However, expectations that the closures would result in a sharp decrease in horse slaughter were not realized. More than expected, the trucking was diverted to Canadian and Mexican plants so that it appears that the slaughter rate remains at the 100,000 to 150,000 annual level under conditions that are far worse than before.

This unfortunate, indeed tragic outcome makes federal action imperative. The FY2006 Agriculture Appropriations Act did add a rider that prohibited the USDA from funding federal plant inspections, which is mandated for all meat intended for human consumption under the Federal Meat Inspection Act (“FMIA”) (21 U.S.C. §§ 601 *et seq.*). The measure would have had nationwide effect but would not have affected shipments to other countries. Worse, under the Bush Administration, the USDA thwarted implementation of the measure by accepting funding offered by the plant owners, thus catering to their wishes and interests in brazen disregard of clear Congressional intent.

The USDA should support a comprehensive ban on the purchase, sale, and transportation of horses to any plant whether domestic or foreign. In the 110th Congress, two such bills were pending: the American Horse Slaughter Prevention Act (H.R. 503 and S.311) and the Prevention of Equine Cruelty Act (H.R.6598).

4. *Companion animals*

The Association urges the USDA to support legislation that will help protect breeding dogs and by providing the resources necessary to regulate the dog breeding industry.

In puppy mills, breeding dogs are usually confined in small cages for the purpose of making a profit for their owners by supplying the market with puppies. The abuses that breeding dogs endure throughout their lives have been extensively documented by the USDA, the ASPCA the Humane Society of the United States, and other animal-related organizations. For example, in April 2008, nearly 1,000 neglected and abused dogs were rescued from a puppy mill in West Virginia. The rescuers found dogs confined in small rabbit hutches in 95-degree heat—many without water. In June 2008, nearly 700 dogs were rescued from a puppy mill in Tennessee. Dogs were found in cages caked with feces with rotten food or no food at all. USDA inspectors have also documented horrifying conditions. For example, inspectors have found animals living in severe pain without the attention of a veterinarian; animals confined in cages that were so overcrowded that they could not lie down at the same time; animals living outside in cold weather without bedding for warmth or without protection from rain; and animals plagued by pests and rodents. Public outrage has been mounting, particularly since Oprah Winfrey devoted a show to revealing the horrors of puppy mills in fall 2008. The American public wants the abuse to end.

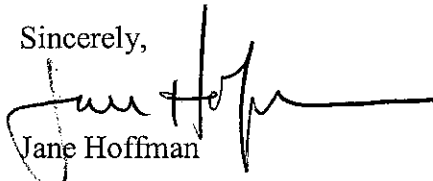
In September 2008, the Puppy Uniform Protection and Safety Act (the “PUPS Act,” also known as “Baby’s Bill”) was introduced in the House of Representatives as H.R. 6949 by Representatives Farr, Gerlach, Capps, Everett, Patrick J. Murphy, Nadler, Lipinski, Kennedy, Moore, Frank, Gallegly, McCotter, Kirk, Schakowsky, Biggert, Moran, McGovern, and McCollum. A companion bill, S. 3519, was also introduced in the Senate by Senators Durbin, Feinstein, McCaskill, and Wyden. The bill will likely be reintroduced in the 111th Congress. The PUPS Act amends the AWA to (1) extend its scope to include breeders who sell or raise 50 or more dogs per year and (2) require that animal dealers provide dogs who are 12 weeks or older with at least two exercise periods per day, for a minimum of one hour of exercise total per day. The federal law would not preempt state legislation that is stricter. LIPTA urges the USDA to support this bill and to devote the resources necessary to enforce the AWA.

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There are many important issues, bills, and court decisions relating to animals and animal advocacy that have not been addressed in this letter, which is limited to a handful of issues on which we feel the USDA could take swift action. LIPTA welcomes the opportunity to work with the USDA and the Obama Administration on the vitally important issues discussed in this memo as well as any other issues relating to animals and animal advocacy. Please contact us if you have questions about our recommendations, would like more information, or would like to see further support for the matters we have raised above. You may reach the Committee on Legal Issues Pertaining to Animals by contacting Jane Hoffman, Committee Chair, at jehoffman@earthlink.net

Thank you very much for your attention and concern.

Sincerely,


Jane Hoffman

CC: Tom Harkin, Chair, Senate Committee on Agriculture, Nutrition & Forestry
Saxby Chambliss, Ranking Member

Collin C. Peterson, Chair, House Agriculture Committee
Frank D. Lucas, Ranking Minority Member

Senator Charles E. Schumer
Senator Kirsten Gillibrand

New York Congressional Delegation